

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

O.P.No.528 of 2020

and

A.Nos.2874 & 3801 of 2021

M/s.AL TIRVEN STEELS LTD
Rep.by its Director,
D.Srinivas,
No.1111, 3B, Z-Block
13th Street, Anna Nagar,
Chennai 600 040.

Previously having office at
31/32, Nathamuni Street,
Naduvankarai,
Chennai 600 040.

... Petitioner

Vs.

1.M/s.IVRCL Assets and Holding Ltd.,
Formerly known as
IVR Prime Urban Developers Ltd.,
Rep.by its Managing Director,
No.30-A, South Phase,
6th Cross Street, Thiru.Vi.KaIndl.Estate,
Guindy, Chennai – 600 032.

2.Mr.Justice K.Govindarajan (Retd),
Sole Arbitrator,
No.5, Justice Ramanujam Road,
Malavia Avenue, Shasthri Nagar,
Chennai – 600 041.

... Respondents

PRAYER : Original Petition filed under Section 34(1) of the Arbitration and Conciliation Act, 1996, praying to set aside the order/award dated 09.01.2019 passed by the Sole Arbitrator/2nd Respondent and restore the Arbitration Proceedings between the petitioner and the 1st respondent in MoU dated, 20.12.2006 and thus render justice.

In O.P.No.528 of 2020

For Petitioner : Mr.S.Sathiaseelan

In A.No.2874 of 2021

For Applicant : Mr.S.Sathiaseelan

For Respondents : Mr.M.S.Seshadri

In A.No.3801 of 2021

For Applicant : Mr.Thriyambak J.Kannan

For Respondents : Mr.S.Sathiaseelan
(For R1)

Mr.M.S.Seshadri (For R2)

ORDER

This petition was originally filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the order dated 09.01.2019 made by the Arbitral Tribunal constituted by the Sole Arbitrator. This Court passed an order on 23.01.2023 and the same is extracted hereunder:

“Read this in conjunction with and in continuation of earlier proceedings dated 06.01.2021 made by this Court in captioned Original Petition being O.P.No.528 of 2020, which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the captioned OP in the listing on 02.12.2020, which reads as follows:

'Captioned 'Original Petition' ('OP' for the sake of brevity) is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

2. An order dated 09.01.2019 made by an 'Arbitral Tribunal' ('AT' for the sake of brevity) constituted by a sole Arbitrator, who is a former Hon'ble Judge of this Court has been called in question (hereinafter 'impugned order' for the sake of convenience and clarity). To put it differently, impugned order is sought to be set aside in the captioned OP. Mr.S.Sathiaseelan, learned counsel on record for the sole

petitioner is before me in this web-hearing on a video-conferencing platform.

3. The issue that came up for consideration is, whether the impugned order would qualify as an arbitral award within the meaning of Section 2(1)(c) of the A and C Act. Be that as it may, a perusal of the impugned order brings to light that AT says that it has been made under Section 32(2)(c) of the A and C Act. To be noted, the order pertains to termination of proceedings. Learned counsel for petitioner submits that the order ought to have been made under Section 25(c) of A and C Act. Without expressing any opinion on the provision under which the order could have been made, the fundamental question or the preliminary question is whether the impugned order can be assailed by way of an application under Section 34 i.e., captioned OP. Learned counsel for petitioner submitted that he had earlier filed a writ petition in this Court assailing the impugned order being writ petition dated 23.01.2019 filed vide S.R.No.10922 dated 23.01.2019, but the same has not been pursued further. This Court is informed that this writ petition is now lying under objections qua Registry.

4. The neat preliminary question is, whether the impugned order i.e., order dated 09.01.2019 made by the AT can be assailed under Section 34 of the A and C Act or whether the learned counsel should pursue the aforementioned writ petition and/or seek any other remedy in law. A further question is, whether the impugned order would qualify as an arbitral award within the meaning of Section 2(1)(c) of A and C Act.

5. Faced with the above situation, learned counsel for petitioner sought time to examine the obtaining legal position and make submissions regarding the above question.

At request of learned counsel for petitioner, list this matter on 15.12.2020.'

2. Aforementioned proceedings are self explanatory in the listing, thereafter on 15.12.2020, learned counsel for petitioner in captioned OP filed a memo and proceedings made on 15.12.2020 listing reads as follows:

'Mr.S.Sathiaseelan, learned counsel on record for petitioner advertng to earlier proceedings dated 02.12.2020 submits that he has filed a memo (physical filing) yesterday (14.12.2020).

2. Registry to place the hard copy of the memo as part of the case file in the next listing. Learned counsel submits that a soft copy of the memo has also been e-mail filed.

At request, list after Chirstmas vacation under the same caption.'

3. Owing to limited purpose for which these proceedings are made, I do not propose to reproduce the entire memo. It will suffice to extract and reproduce the last paragraph of memo dated 14.12.2020 which reads as follows:

'In view of the above factual and legal submissions, it is humbly prayed that this Hon'ble Court may be pleased to treat the present original petition filed U/s.34(1) of the A and C Act as an application filed u/s.14(2) of the A and C Act and thus render justice.'

4. Today, in this web hearing on a video conferencing platform i.e., Virtual Court Mr.S.Sathiaseelan learned counsel draws the attention of this Court to the aforementioned memo and requests this Court to treat the captioned OP as an

application under Section 14(2) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of convenience and clarity. Learned counsel adds that this is a Commercial Division matter within the meaning of Section 10(2) of The Commercial Courts Act, 2015 (Act No.4 of 2016) and he also submits that quoting a wrong provision of law can neither disentitle the petitioner from seeking relief nor denude the Court of its powers to hear the matter if the Court otherwise has powers.

5. This takes us to the allocation of work/roster made by Hon'ble Chief Justice which is now operating on and from 04.01.2021. The allocation of work to me figures at Serial No.16 and the same reads as follows:

- | | | |
|----|-------------|---|
| 16 | M.Sundar, J | Applications for setting aside of arbitral awards under Sec.34 of the Arbitration and Conciliation Act, 1996 and/or Sections 30 and 33 of the Arbitration Act, 1940 including cases relating to Commercial Division in the above classification Company Petitions and Company Appeals.' |
|----|-------------|---|

6. The allocation of work regarding arbitration matters to another Hon'ble Single Judge whose name figures at Serial No.32 reads as follows:

32 P.T.Asha, J Arbitration Matters, including cases relating to Commercial Division, which are not specifically assigned to any other Bench Civil Miscellaneous Appeals and Civil Revision Petitions relating to Arbitration Laws.'

7. To be noted, the above extract is relevant portion of allocation of work qua arbitration matters.

8. Therefore, if the captioned OP is to be treated as an application under Section 14(2) of A and C Act, it may have to be heard by another Hon'ble Single Judge according to roster. Be that as it may condition precedent for such a scenario to unfurl is a decision regarding acceding to the request which involves a clear overlap qua Sections 34 and 14 of A and C Act.

9. In this view of the matter, Registry is directed to place the case file along with this proceedings before Hon'ble Chief Justice for suitable orders.

10. Though obvious it is made clear that instant proceedings have been made for the limited purpose of clarity qua note to be placed before Hon'ble Chief Justice by Registry and therefore, no view or opinion on merits of the matter or the contents of aforesaid memo has been made in this proceedings.

11. Let the Registry place this case file before Hon'ble Chief Justice seeking suitable orders along with this proceedings and aforementioned memo dated 14.12.2020 filed

by petitioner in captioned OP.'

2. Petitioner in main OP shall be referred to as 'AL TIRVEN'. First respondent in main OP [IVRCL Assets and Holdings Ltd.,] shall be referred to as 'IVRCL A & H' for the sake of convenience. To be noted, there is another company by name 'IVRCL Limited', which shall be referred to as 'IVRCL' for the sake of convenience. IVRCL is the holding company qua IVRCL A & H besides two other entities, namely 'Rihim Developers Private Limited' [hereinafter 'Rihim' for the sake of convenience] and 'IVRCL TLT Private Limited' [hereinafter 'IVRCL TLT' for the sake of convenience]. It is further to be noted that while IVRCL held approximately 76% equity in IVRCL A & H, Rihim and IVRCL TLT are wholly owned by IVRCL.

3. Today Mr.S.Sathiaseelan, learned counsel for AL TIRVEN, Mr.M.S.Seshadri, learned counsel for IVRCL and

Ms.E.N.Hareepriya, learned counsel for Rihim (Applicant in A.No.3801 of 2021 being implead application) are before this Court.

4. From the submissions made by the aforementioned learned counsel before this Court, it comes to light that there has been a scheme for merger and demerger inter alia under Sections 391 to 394 of the erstwhile Companies Act, 1956 as between IVRCL, IVRCL A & H, Rihim and IVRCL TLT. The shareholders are also parties.

5. The above scheme has been duly approved by Hon'ble Andhra Pradesh High Court in and by order dated 02.07.2012 made in C.P.Nos.58 to 61 of 2012. The appointed date is of significance and the same is 01.04.2011.

6. This Court is informed that IVRCL is now under CIRP qua National Company Law Tribunal, Hyderabad Bench

vide order dated 26.07.2019 made in CP (IB) No.294/7/HDB/2017 in proceedings initiated under Section 7 of 'Insolvency and Bankruptcy Code, 2016' [hereinafter 'IBC' for the sake of brevity] and Mr.Sutanu Sinha is now the Liquidator qua IVRCL.

7. The aforementioned 06.01.2021 proceedings is inter alia telltale qua the trajectory the arbitral proceedings have taken.

8. As regards the CIRP proceedings, the same has been captured supra. From a conjoint reading of the two, the most relevant factor appears to be Section 11 proceedings before this Court vide O.P.No.289 of 2011 wherein a former Hon'ble Judge of this Court was appointed as sole Arbitrator in and by an order dated 05.09.2014. To be noted, when this 05.09.2014 came to be made, the aforementioned merger and demerger scheme had kicked in and was operating as the appointed date is 01.04.2011 but it is not clear as to whether

this was brought to the notice of Hon'ble Judge/Hon'ble Chief Justice who made the order dated 05.09.2014.

9. A search in the official website of this Court by the Court for 05.09.2014 order made in O.P.No.289 of 2011 did not yield results.

10. Learned counsel for petitioner, faced with the above situation sought for a short accommodation to produce the aforementioned order as that appears to assume significance in the scheme of things qua merger/demerger.

11. Learned counsel for petitioner requests for a short accommodation. Request acceded to.

List after a fortnight in my next single sitting.”

2. The matter was once again listed on 23.07.2024 along with Application No.2874 of 2021 in O.P.No.528 of 2020 and Application No.3801 of 2021 in Application No.2874 of 2021 in O.P.No.528 of 2020. The Application No.2874 of 2021 was filed to substitute the Liquidator in

place of the existing sole respondent in O.P.No.528 of 2020. The Application No.3801 of 2021 was filed by a third party, seeking to implead as the proposed second respondent in Application No.2874 of 2021 in O.P.No.528 of 2020. The learned Judge recused himself by passing an order dated 23.07.2024.

3. When the matter was taken up for hearing today, the learned counsel appearing for the applicant submitted that even though the petition was originally filed under Section 34 of the Act, it has to be treated only as an application under Section 14(2) of the Act, which pertains to the order passed by the Arbitral Tribunal dated 09.01.2019, refusing to recall the order of termination dated 26.02.2018 originally made under Section 25(a) of the Act and subsequently held to be under Section 32(2)(c) of the Act owing to multiple claims and proceedings before the National Company Law Tribunal (NCLT).

4. The learned counsel appearing on behalf of the Liquidator broadly made two submissions. The first submission is that the present petition cannot be proceeded further in view of Section 33(5) of the IBC Code. Insofar as this submission is concerned, the learned counsel brought to the notice of this Court the judgment of the Hon'ble Mr.Justice N.Sathish Kumar, in the case of ***Chennai Metro Rail Limited, represented by the Chief General Manager vs. Lanco Infratech Limited, represented by the Liquidator Lanco House and others***, reported in ***2020 SCC OnLine (Mad) 26397***. The learned counsel submitted that the learned Judge took a view that there is no bar in dealing with the petition filed before the Court. This order was put to challenge before the Hon'ble Division Bench in O.S.A.No.249 of 2020, and the Division Bench entertained the appeal and granted an order of interim stay.

5. The other submission that was made by the learned counsel for the Liquidator is that since the petitioner has not even submitted his claim within the time stipulated under the IBC, he is barred from making any

claim in future. To substantiate this submission, the learned counsel relied upon the judgment of the Apex Court in the case of ***RPS Infrastructure Limited Vs. Mukul Kumar and another***, reported in ***2023 (10) SCC 718***. The learned counsel submitted that in the case before the Apex Court, the claimant was having an award in his favour and in spite of the same, the claim was not made in time and it was held by the Apex Court that the corporate debtor/claimant has missed the bus and therefore, he cannot make any further claims.

6. In reply to the above submission, the learned counsel for the petitioner brought to the notice of this Court the judgment of the Bombay High Court in the case of ***Urban Infrastructure Trustees Ltd., Vs. Bhavik Bhimjiyani and others***, reported in ***2018 SCC OnLine Bom 20447***, where the Bombay High Court had taken into consideration Section 35(1)(k) of the IBC Code and has held that it is always left open to the Liquidator to defend the company before the Tribunal.

7. The learned counsel also brought to the notice of this Court the order passed by the Apex Court against the order passed by the Bombay High Court in SLP Nos. 391-392 of 2019 dated 09.04.2024, where the Apex Court permitted the petitioner to withdraw the case and to work out the remedy in accordance with law.

8. In view of the above, the learned counsel for the petitioner submitted that even before the first order was passed by the learned Arbitrator on 26.02.2018, the moratorium order had already come into force on 23.02.2018 itself, by virtue of the order passed by the NCLT, Hyderabad, dated 23.02.2018. Therefore, it was contended that the first order passed itself is unsustainable in law.

9. In the considered view of this Court, in light of the stand that has now been taken by the Liquidator, even if this Court permits the arbitration proceedings to continue and an award is also passed in favour of the petitioner, it is not certain as to what subsequent remedy can the petitioner

seek even after obtaining the award. In this situation, it may even be a wasteful exercise for the petitioner to go before the Arbitrator and start the proceedings all over again.

10. When this Court expressed its mind, the learned counsel for the petitioner submitted that the petitioner may be permitted to make the claim before the Liquidator by raising all the grounds and the same can be considered by the Liquidator in accordance with law.

11. Taking into consideration the facts and circumstances of the case and considering various subsequent developments, which has taken place in this case and also taking note of the fact that at no point of time, the petitioner was made aware of the proceedings before the NCLT under IBC by the respondent and the petitioner claims to have been kept in dark right through and the claim made by the petitioner can always be considered by the Liquidator strictly in accordance with law, this Court is inclined to grant liberty to the petitioner to make the claim before the Liquidator by raising

all the grounds. The Liquidator, who is now in charge of the respondent company, shall consider the claim on its own merits and in accordance with law and take a decision and inform the same to the petitioner. The entire process shall be completed within a period of three (3) months from the date of receipt of the claim from the petitioner.

12. This petition in O.P.No.528 of 2020 is disposed of in the above terms. In view of this order, the other applications in A.Nos.2874 and 3801 of 2021 are closed. However, there shall be no order as to costs.

18.09.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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N.ANAND VENKATESH, J.

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